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| 8 | CJP by and through RP (Father) |) Case No.: DP 14-104 |
| 9 | Petitioners |) PETITIONER POSTHEARING BRIEF |
| 10 | vs. |) |
| 11 | Grants Pass School District 7 |) |
| 12 | Respondents |) |
| 13 | |) |
| 14 | |) |

The testimony and evidence from the hearing on June 16 and 17, 2014 prove though a preponderance of the evidence the district failed to provide ESY services to the Petitioner in the IEP meeting of April 10th, 2014 in error and direct contradiction to Federal and State law and this failure constitutes a failure to provide FAPE to Petitioner and denies him educational opportunity.

23 1. A primary argument of the district throughout the hearing had to do
24 with whether the data collected and compiled by district employees in
25 exhibit S21 relating to an obvious serious increase in the behaviors of

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1 Petitioner after the Winter break should be used as one means to
2 determine ESY eligibility. The district contended it should not because
3 the data was not aligned with a goal or objective and their ESY
4 guidance documentation stated ESY could only be based on
5 regression/recoupment problems pertaining to goals or objectives in the
6 IEP. The basis for this determination and lack of review of available
7 data was in error. Oregon State law mirrors the Federal Regulations
8 when it states in part:

9 OAR 581-015-2065

10 Extended School Year Services

11 (1) School districts must ensure that extended school year
12 services are available as necessary to provide a free appropriate
13 public education to a child with a disability.

14 (2) Extended school year services must be provided only if the
15 child's IEP team determines, on an individual basis, that the
16 services are necessary for the provision of free appropriate
17 public education to the child.

18 (3) A school district may not:

19 (a) Limit extended school year services to particular categories
20 of disability; or

21 (b) Unilaterally limit the type, amount, or duration of those
22 services.

23 (4) The purpose of extended school year services is the
24 maintenance of the child's learning skills or behavior, not the
25 teaching of new skills or behaviors.

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2 (5) School districts must develop criteria for determining the
3 need for extended school year services. Criteria must include
4 regression and recoupment time based on documented evidence or,
5 if no documented evidence, on predictions according to the
6 professional judgment of the team.

7 Although the State and Federal regulations allow the district to
8 develop the criteria for determining the need for ESY, they do not
9 provide for limiting the inquiry to regression on IEP goals or
10 objectives only. This is clearly stated in par. (1) of the State
11 regulation when it references the services are required when necessary
12 to provide FAPE. The definition of FAPE is not limited to just goals
13 and objectives as par. (4) clearly includes the maintenance of
14 behaviors as a purpose for ESY in direct contradiction to the
15 district's ESY guidance. Additionally, student's IEP contains many
16 references including the need for a functional behavior assessment and
17 behavior support plan which support the inference maintenance of
18 behaviors is critical to his academic success and a FAPE.

19 2. Both the SPED Director Mr. Kolb and teacher Mrs. Jewell confirm in
20 testimony Mrs. Jewell developed, analyzed and provided the sole data
21 set, exhibit D10, used to make the ESY determination in the IEP meeting
22 to determine ESY. Tr. Vol. 1, 25:12-16, Tr. Vol. 1, 27:10-16, Tr. Vol.
23 1, 49:7-14 and Tr. Vol. 1, 105:1-23.

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1 3. The teacher Mrs. Jewell agreed in testimony student's aberrant or
2 negative behaviors can impede and impact every goal and objective. Tr.
3 Vol. 1, 147:17-20

4 4. The teacher additionally states she was responsible for confirming and
5 verifying the fidelity of the data and the methods in which it was
6 collected. Tr. Vol. 1, 149:22-25 She then goes on to state to Judge
7 House she made sure the discreet trials and collected data were being
8 presented consistently and collected correctly. Tr. Vol. 1, 154:1-5 She
9 then at Tr. Vol. 1, 14:13-25 alludes to her personal observation of the
10 fidelity of the methods and data for the first two data points after
11 the Winter break. Surprisingly, she later recants those statements at
12 Tr. Vol. 1, 168:6-12 and further states at Tr. Vol. 1, 201:9-15 she
13 could not use the aforementioned data for ESY determination nor would
14 she recommend its use for ESY determination by the IEP team. It appears
15 as the hearing progresses the teacher lost confidence in what she was
16 stating and went from being completely confident in the data to
17 suggesting it should not be used at all.

18
19 In order for the District to have provided a FAPE, it must have
20 complied with the procedures set forth in the IDEA, and its IEP must have
21 been reasonably calculated to enable the child to receive educational
22 benefit. *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034,
23 3051, 73 L.Ed.2d 690 (1982).

24 The Supreme Court further identified in *WINKELMAN v. PARMA CITY SCHOOL*
25 *DISTRICT* (2007) [That] IDEA requires school districts to develop an IEP for

Exhibit 4

1 each child with a disability, see §§1412(a)(4), 1414(d), with parents playing
2 "a significant role" in this process, *Schaffer v. Weast*, 546 U. S. 49, 53
3 (2005). And the Court additionally provides us with a definition of FAPE:

4 The Act defines a "free appropriate public education" pursuant to an
5 IEP to be an educational instruction "specially designed . . . to meet
6 the unique needs of a child with a disability," §1401(29), coupled with
7 any additional " 'related services' " that are "required to assist a
8 child with a disability to benefit from [that instruction],"
9 §1401(26)(A). See also §1401(9). (Sec. A, pg. 3, par. 3)
10

11 In the instant case the child has a unique need, as identified by the
12 regression of behavior skills, math skills and reading skills which were not
13 recouped within the district's own guidelines after the Winter break. No, I
14 do not agree with the district methodology, manner or lack of using all
15 existing data to make a determination for ESY eligibility, but this case was
16 not about that. This case was about the data was compiled, parsed and
17 analyzed wrong before the IEP meeting to make the determination was even
18 held; and during the ESY determination meeting, if the data analysis was
19 incorrect the team could not have made a correct decision. I showed through
20 testimony, using the district's own guidelines for analyzing the data, Cody
21 regressed and did not recoup the skills within the allotted time frame on
22 many very important academic skills, but most importantly behavior
23 management, compliance and instructional control. Without those important
24 behavior skills intact, based on the teacher's own testimony, progress
25 towards all goals and objectives will be impeded and impacted. Even the

Exhibit

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1 Autism expert who worked with Cody last summer stated she had difficulty with
2 Cody's behaviors when trying to engage him in academic IEP goals and
3 objectives. Tr. Vol. 2, 147:7-9, 22-25

4 Cody cannot take a test before a break and then take the same test when
5 he gets back from break, such as a times table test to determine if he
6 regressed over an extended break period. The only thing we as parents and
7 educators have to rely on to make a determination of regression and/or
8 recoupment time is the data which is collected pre and post break. The data
9 is just that, data. It is objective information which is blind to whether he
10 is in a good mood or bad mood, has a different instructor for the day or
11 wants to go home early for some reason. It simply tells us what he is capable
12 of at the moment the trial is given to him. If he did not have Autism would
13 we excuse a failed test because he was not in the mood to take a test that
14 day? No, the test would be a direct reflection of his ability when the test
15 was administered. I am keenly aware that I as a parent have no say in
16 teaching methodology or even how data is collected, but when I have access to
17 the raw data collected, I can hold the district culpable for the results of
18 its efforts with said data. That is what this hearing was about. Cody clearly
19 showed regression with a lack of recoupment after the Winter break in enough
20 areas related to a FAPE and educational opportunity to warrant ESY and this
21 demonstrated regression with lack of recoupment was shown using district data
22 and district guidelines. Whether the district is confident in the fidelity of
23 the task presentations and collection methods for the data almost does not
24 matter since their own staff swayed both ways from 100% confident to no
25 confidence. It is and was the only data available, besides the daily behavior

Exhibit

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1 data they were determined not to address or use, for ESY determination and
2 they created it.

3 **CONCLUSION AND RELIEF SOUGHT**

4 The testimony and evidence in this case clearly point to the fact the
5 Respondent district erred in the decision to not provide ESY services for the
6 Petitioner. Regression with lack of recoupment was clearly demonstrated
7 through the data. Without the benefit of ESY over this summer, it is clear
8 the potential for even greater regression with a longer recoupment time is
9 likely.

10 Based on the presumptive finding from this hearing that the Petitioner
11 was denied a FAPE and educational opportunity we request the following
12 relief:

13 Compensatory education to be delivered in the form of ESY during the
14 summer of 2014 to begin immediately and continue until ten days prior to the
15 start of the new regular school year. The details of requested ESY
16 compensatory education are outlined and enumerated in the Hawaii IEP which
17 was in effect prior to the current IEP. The Hawaii IEP is Petitioner exhibit
18 S11 and the outline and enumerated details can be found on page 16 of 16.

19
20 Respectfully submitted this 24th day of June, 2014

21 

22 RAYMOND PARENTEAU

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24
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Exhibit 4